UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DPH HOLDINGS CORP., ET AL.,

Debtors.

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U.S. Bankruptcy Court

300 Quarropas Street

White Plains, New York

June 23, 2011

10:10 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

RE: Doc #21406; Proposed Sixty-Seventh Omnibus Hearing Agenda

RE: Doc #21407; Proposed Forty-Fifth Claims Hearing Agenda

Transcribed by: Avigayil Roth

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PHILIP CARSON, In Propria Persona (TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: Good morning. In re DPH Holdings Corporation.

MR. LYONS: Good morning, Your Honor, John Lyons on behalf of DPH Holdings.

Today on both agendas there are really only two contested matters; the rest have either been settled or adjourned. So first, turning to the omnibus hearing agenda, this is now the sixty-seventh omnibus hearing. There is one contested matter and that is the request for stay of order filed by Mr. Sumpter. My colleague Nick Campanario is going to address the merits of that request, Your Honor. And then again, we did file a brief which I believe outlines our arguments in opposition.

THE COURT: Right. Okay.

Mr. Campanario, you're on the phone, right?

MR. CAMPANARIO: Yeah, that's right.

THE COURT: Okay.

MR. CAMPANARIO: Good morning, Your Honor.

THE COURT: Okay. So do you have anything to add to your papers?

MR. CAMPANARIO: Well, I don't know if Mr. Sumpter is on the phone, but since it's his motion, at least the way I envisioned it was that he would maybe present first and then I would respond to that.

THE COURT: Okay. I don't have him listed on CourtCall.

Mr. Sumpter, are you on the phone?

(No audible response.)

COURTCALL: We have no appearance scheduled for Mr. Sumpter via CourtCall, Your Honor.

THE COURT: All right. He was obviously aware that this hearing had been scheduled; it had been scheduled at his request.

All right. I have reviewed the pleadings, including the filings by the VEBA trust and the VEBA committee, as well as the debtor -- or the reorganized debtor. Does anyone have anything to add to those pleadings?

MS. BEATY: Your Honor, this is Patricia Beaty of Krieg DeVault for VEBA committee. I don't have anything to add, but I wanted to let you know that I was on the phone.

THE COURT: Okay.

MR. CAMPANARIO: Nothing to add here, Your Honor -- Nick Campanario.

THE COURT: All right. All right. Then I'll issue my ruling. Mr. James Sumpter, S-U-M-P-T-E-R, has made a motion for a stay of an order entered recently by the Court in this case, which appears at docket 21306. Granting a motion by the Trust and the -- the VEBA trust and the 1114 Committee jointly, it was not opposed by the debtor.

Deeming or clarifying the record that the establishment of the VEBA benefit among other things -- or among settling other issues in the case, resolved -- or was in lieu of claims that could have been asserted by the VEBA parties for COBRA. Those parties, in fact, did not assert those claims during the case in an active way. Instead, the only party to do so in the case was Mr. Sumpter.

He raised the potential COBRA claim twice in this case, first, in opposition to the debtors' motion to terminate retiree benefits. I granted that motion, and in so doing overruled Mr. Sumpter's objection. Secondly, Mr. Sumpter filed an expedited motion to enforce COBRA benefit for Delphi salaried retirees, and a motion for COBRA settlement (COBRA benefit motion) on July 10th, 2009. Which I heard at the -- based on the expedited request -- at the hearing on Delphi's request to modify its confirmed Chapter 11 plan, which I held on July 29th, 2009, and thereafter gave my ruling on July 30th, 2009.

I treated Mr. Sumpter's expedited motion from July 10, 2009 equally as an objection to Delphi's proposed modified plan as well as a stand-alone motion. I overruled the motion in its capacity as an objection to the plan as referenced in the July 30th plan modification order -- July 30th, 2009 plan modification order, and as set forth in my bench ruling from July 30th, 2009. I also issued an order denying Mr. Sumpter's

motion in which I denied the motion having alread -- as moved having already ruled against him on the motion in connection with the plan modification order. That second order was entered by me on August 30th, 2009.

Those two orders -- i.e., the plan modification order and the August 30, 2009 order were not appealed by Mr. Sumpter and have become final, obviously, years ago. Notwithstanding that fact, Mr. Sumpter has requested a stay of my recent order granting the VEBA trust motion on the ground -- as stated in his motion -- that he seeks an opportunity to submit a motion for reconsideration of his July 10th, 2009 motion and the orders that I issued in July and August 2009 denying that motion. The rationale for seeking -- eventually -- a motion under presumably Bankruptcy Rule 9024 -- although that basis in the Rules is not stated in his present motion before the Court -- is "based on the fact that movant has secured an IRS ruling letter", which Mr. Sumpter believes is contrary to the Court's bench ruling from July 30, 2009 in which I denied his July 10 motion.

In addition, Mr. Sumpter states that he also needs time to hire an economist and time for the economist to perform the required analysis regarding the underlying financial conditions during the two critical COBRA-related dates. Ultimately, then, the legal basis for Mr. Sumpter's present motion to stay my order on the VEBA committee's motion is

premised upon his ability to obtain the vacatur of the July 30th, 2009 plan modification order and the August 3, 2009 order denying his July 30th motion as a stand-alone motion as moot now having -- my having already ruled on it in the July 30th order -- and bench ruling. The reorganized debtor, DPH Holdings, as well as the VEBA Committee for the Delphi Salaried Retirees Association Benefit Trust and The Official Committee of Salaried Retirees have each objected to the stay motion by Mr. Sumpter, as well.

The standard for obtaining a stay pending appeal is clear in this circuit with one potential exception that is not relevant here. All courts agree that under Bankruptcy Rule 8005, which governs the procedures for seeking a stay pending appeal, a party seeking a stay has the "heavy burden" to demonstrate: one, whether the movant will suffer irreparable injury absent a stay; two, whether a party will suffer substantial injury if a stay is issued -- that is another party; three, whether the movant has demonstrated a substantial possibility -- although less than a likelihood -- of success on appeal; and four, the public interests that may be affected. See In re Calpine Corp., 2008 Bankr. LEXIS 217 at 10 (Bankr. S.D.N.Y. 2008), as well as In re Adelphia Communications Corporation, 361 B.R. 337, 346 (S.D.N.Y. 2007), and In re Suprema Specialties, Inc. 330 B.R. 93, 95 (S.D.N.Y. 2005).

The only potential area of confusion in this circuit

is whether the moving party must show all of the forgoing four factors or, you know, in the alternative, whether the movant, in establishing its heavy burden, may assert factors in a way so that the court can balance them against the other. This issue discussed by Judge Lifland in the Calpine case here, as elsewhere in the case law, the showing of irreparable harm is the principle requisite for the issuance of a stay under Bankruptcy Rule 8005. See Grand River Enters. Six Nations Ltd. v. Pryor 481 F.3d 60, 67 (2nd Circuit 2007).

In that the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of injunction will be considered, see also Mohammed v. Reno 309 F.3d 95, 100 (2nd Circuit 2002), where the court said the probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff will suffer absent the stay. Simply stated, "More of one excuse is less of the other".

The motion asserts irreparable harm here in that the movant, Mr. Sumpter, apparently believes that the issuance of my order would serve apparently as a declaration that all potential COBRA claimants had settled their COBRA claims in lieu of the VEBA benefit that the debtors agreed to with the VEBA committee and the statutory 1114 committee. That notion of a declaratory judgment in that the settlement would be binding on all parties as a settlement of COBRA claims does not

appear to be apparent from the order that I entered earlier this month.

I also should note that the existence of such a settlement has been a matter of record for years and the underlying support for the debtors' payment of a settlement has been a matter of record for years. And in addition, the so-called private letter ruling that Mr. Sumpter says he has obtained and which he seeks to have be a basis for a motion to vacate the confirmation order and/or the August 3rd order -- August 3rd, 2009 order denying his motion has been present for several years, i.e., since November of 2009.

Given those facts, it's difficult for me to see irreparable harm to the movant now in light of all the time that has passed. But I do not find that Mr. Sumpter has carried his burden to show imminent and irreparable harm by the entry of the -- an enforcement of the Court's order granting the VEBA committee's motion. I agree with the objectors -- the 1114 Committee and the VEBA trust committee -- that granting Mr. Sumpter's motion and staying my order could provide substantial -- or cause substantial injury to them since the purpose of their seeking such an order was to make it clear to the IRS and obviate the need to go back through additional peeling of the onion with regard to the initial settlement setting up the VEBA benefit -- that part of the consideration in the debtors settling with the VEBA committee was to resolve

any potential outstanding COBRA issues.

The reason that there would be a potential -- a serious potential for substantial injury to the nonmoving parties is that they are seeking a letter ruling from the IRS to confirm that fact and have a time deadline to do so. The letter ruling process is potentially lengthy and a stay of my order would cloud that process, and I believe provide -- or cause the potential that the IRS would simply not issue a ruling until that cloud was removed.

The most important factor here, however -- although I find that Mr. Sumpter has not shown irreparable harm and that there is a substantial injury -- or there would be to the nonmoving third-party objectors here, is the likelihood of success factor. I find that there is literally no likelihood of success that Mr. Sumpter would prevail on his ultimate necessary precondition here for relief, which is obtaining an order to vacate the plan modification order, as well as my August 3rd, 2009 order denying his July 10, 2009 motion.

As the debtors point out, under Bankruptcy Rule 9024 there is a unique time limitation on requests to revoke an order confirming a plan, which the plan modification order was; that time limit is 180 days. It exists, obviously, because of Congress' desire to have a finality to the confirmation of Chapter 11 plans that is prescribed by much more restrictive time limit -- or a much more restrictive time limit than the

general time limit applicable to motions under Rule 60, which is incorporated into Bankruptcy Rule 9024. Clearly more than 180 days has lapsed since the entry of the July 30th, 2009 plan modification order.

The Court treated Mr. Sumpter's July 10, 2009 motion as an objection to the plan -- and Mr. Sumpter did as well -- both as to the feasibility of the plan under Section 1129 as well as to whether the plan complied with applicable law and was proposed in good faith. Mr. Sumpter contended that because of his view that he and others like him were entitled to an unlimited COBRA benefit until their death, the debtor would owe hundreds of millions of dollars, which would completely undermine the plan in that the debtors' intention to proceed in derogation of its responsibility to provide for such a benefit was not in good faith and contrary to applicable law.

I concluded, to the contrary, that based on my analysis of the applicable statute and regulations as set forth in the transcript of my bench ruling from July 30th, that under the circumstances here there was a twelve-month window upon which unlimited COBRA benefits could be triggered after the commencement of Delphi's Chapter 11 case, construing 29 U.S.C. Section 1163.

Since the benefits were terminated more than twelve months -- and, in fact, considerably more than twelve months after Delphi's petition date in a context where Delphi had very

clearly intended to maintain those benefits beforehand and where Delphi's original confirmed Chapter 11 plan had provided for the maintenance of such benefits, clearly new financial circumstances had occurred -- i.e., the total collapse of the auto market in light of the financial recession -- that changed that path, and since those events occurred more than twelve months after the petition date, there was a -- based on my reading of the statute -- an exception to the rule that Mr. Sumpter was relying upon.

His focus was simply on his disagreement with the debtors' position as to whether the twelve-month limitation applied to both pre and post-petition periods. He viewed the limitation applying only to pre-petition periods; the debtor viewed, obviously, that it applied to both pre and post-petition, and I agreed with the debtors. The ruling, as I said, is now not subject to Rule 60 challenge or any other challenge other than fraud in the adducement, which was not asserted by Mr. Sumpter here as based upon the 180-day limitation that I've already discussed.

Furthermore, to the extent that the confirmation order -- or the plan modification order of July 30th, 2009 wouldn't apply -- and when we're focusing on seeking vacatur of the August 3rd order -- although I don't believe that that would be the appropriate approach -- Rule 60 as incorporated in Rule 9024 wouldn't apply there either.

With regard to that order standing on its own, Rule 60 as incorporated by Rule 9024 sets forth six factors -- or six bases for a court relieving a party of a final judgment or order: one, mistaken advertent surprise or excusable neglect; two, newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); fraud, whether heretofore denominated in intrinsic or extrinsic misrepresentation or other misconduct of an adverse party; four, the judgment is void; five, the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or six, any other reason justifying relief from the operation of a judgment.

The catchall provision is not intended to apply in a situation where any of the prior five provisions would apply; reasons one, two and three give rise to a basis for vacatur and reconsideration of vacatur for no more than a year after the entry of the judgment order or the date of the proceeding. The only two grounds that could even be remotely applicable here are ground number two, newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), which is precluded by the one-year limitation that I've just mentioned; and six, the catchall provision.

I should note that the so-called IRS ruling that Mr. Sumpter is relying upon is clearly not that; on its face it is not stated as a ruling, but rather only as general observations about a bankruptcy qualifying event. Moreover, it is simply a restatement -- albeit from an IRS official -- of the statute, although it is stated as not being binding on the IRS. It confirms that there is a twenty-four month period that could only be pre and post since the statute refers to twelve months, and that that period is an exception in the situation where the underlying financial condition that led to the bankruptcy is not a major contributing factor leading to the termination of coverage.

But in any event, the law is clear that even if it were taken to be a change in decisional law, relief should not be granted under Rule 60(b), and in particular under Rule 60(b)(6). See Moore's -- I'm sorry, see 12 Moore's Federal Practice section 60.485(b) where the editors go on to say, "the rationale for denying relief in such a situation is particularly strong in cases in which a party had not bothered to appeal to challenge existing law and then hopes to benefit from the efforts of some other person's appeal", or I believe a later development in the law that that party could not obtain itself. That the editors of Moore state that this, "should never be considered an extraordinary circumstance under which equity would set aside a final judgment".

So I find that there is literally no likelihood of success on appeal here since the appeal would be premised upon vacatur of the plan modification order as well as the August 3rd, 2009 order and there is no basis under Rule 9024 otherwise to vacate those orders. The last public policy interest provision is at best neutral here for Mr. Sumpter, although given the potential harm to many third parties as described in the two briefs submitted by the retirees and the VEBA trust and the lack of merit to Mr. Sumpter's underlying legal arguments I conclude that the public interest is against staying my recent order.

So for all those reasons I'll deny Mr. Sumpter's motion. The debtor can submit an order doing so consistent with my ruling.

MR. LYONS: Thank you, Your Honor. We will do so.

THE COURT: Okay.

MS. BEATY: Thank you, Your Honor.

THE COURT: Thank you.

MR. LYONS: That's it for the omnibus hearing, Your Honor.

Now we turn to the forty-fifth claims hearing agenda. Items 1 through 8 and items 11 -- which is the Conway matter -- those have all been adjourned. Item number 10, which is the claim relating to FCI entities, that I understand has been settled. So that just leaves item number 9, which is the

sufficiency matter for Philip J. Carson's claim.

THE COURT: Okay.

MR. LYONS: So we'd like to turn to that. I believe Mr. Carson is on the line.

THE COURT: Are you on the phone, Mr. Carson?

MR. CARSON: This is Philip Carson, Your Honor.

THE COURT: Okay. Good morning.

MR. CARSON: Good morning.

MR. LYONS: And as Your Honor may recall, last time we were before you on Mr. Carson's matter it was in relation to a motion to deny the claim on the grounds that it was late; there were some issues regarding the service and where Mr. Carson was. His mother was ill, so per the Court's admonition we did reach out to Mr. Carson to discuss settlement. In that context though, we did note that Mr. Carson has also been -- filed and pursuing a Workers' Compensation claim under the state of Michigan laws and that precipitated the notice of sufficiency hearing. Because like, you know, most other states -- almost all states that have a Workers' Compensation framework, if an injury occurs while the employee is working at a workplace, the sole remedy of that employee is to pursue a Workers' Compensation claim.

THE COURT: And if Mr. Carson successfully pursues that claim, what would happen?

MR. LYONS: What would happen -- the state of Michigan

also filed a timely administrative claim for Workers' Compensation matters, so the way that would work, Your Honor, is -- because Michigan has a timely filed administrative claim, ultimately the debtors would pay that post-petition Workers' Compensation claim.

THE COURT: Okay.

MR. LYONS: So again, what we would ask for Your Honor is to --

THE COURT: So if Mr. Carson's successful, let's say he gets the Workers' Compensation Board and however -- whatever levels of appeal that people go through -- conclude that he's entitled to dollar X, whatever that amount is, that would get paid by DPH?

MR. LYONS: Or Michigan -- or the state of Michigan.

THE COURT: Or Michigan and then DPH -- and then Michigan would have whatever subrogation claim or other claim it would have against DPH?

MR. LYONS: Correct, Your Honor.

THE COURT: All right.

MR. LYONS: So again, what relief we're seeking is really to have Mr. Carson's claim disallowed without prejudice to his rights to pursue this Workers' Compensation claim.

THE COURT: Okay. So he has a timely marker in his proof of claim so he can pursue that Workers' Compensation claim?

MR. LYONS: Well, Your Honor, I don't know exactly what all the defenses are to the Workers' Compensation --

THE COURT: Okay.

MR. LYONS: -- claim itself --

THE COURT: Fine.

MR. LYONS: -- so I don't want to prejudice -- you know -- DPH's defense of that --

THE COURT: Right. But if it's allowed, the debtor would -- let me step back. If I granted the debtors' objection today, if the Workers' Compensation claim ultimately is allowed by the Workers' Compensation Board and any appeals -- after any appeals there from, my disallowance of the claim here doesn't affect his right to get paid?

MR. LYONS: Correct.

THE COURT: Okay. All right. Okay. Mr. Carson, I don't know if that's made things clearer for you, but I'm happy to hear from you on this point.

MR. CARSON: Okay. Yes. I've read all the memos that the law firms have sent me. They sent me a supplemental reply in reference to all the facts that were just issued. I don't know, Your Honor, if you have a copy of my response to them.

THE COURT: What did -- just -- if you could summarize it.

MR. CARSON: It won't take long.

THE COURT: I think I did, but if you could just

summarize it.

MR. CARSON: The Workers' Comp, as it is there's a case pending right now and of course, it's with the PBGC or they have to figure that out as we just talked about. But my visibility of this whole thing is that it was negligent on the company's part to have the canisters there. Yes, I was working and I was the maintenance supervisor and I had to get the assembly lines back to work and I think I mentioned that before it was my job to do that, and I -- you know, these canisters were out there for twenty-some years and it shouldn't have been there because we do yearly audits -- or the plant that I was assigned to does.

And I was looking at this twofold, being a Workers' Comp thing that would help me out with the horrendous amount of pay that I view that's being lost, because when I was sixty I was sent out -- and I had plans because I'm very healthy -- to work longer than that; and so that would take care of that. But the reason I put in -- you know, submitted this administrative claim was because of all the pain and anguish and the suffering I'm going through because I just located myself in Florida for better air, and there's supposed to be the cleanest, best air down here in Ormond Beach and -- but, you know, it's not really where I wanted to live, but I'm doing it so I can breathe better. I can't breathe inside the enclosed areas too good, I have to -- you know, if I go into a

doctor's office or something like that then I have to get out because I've got to have volume of air.

So anyway, I don't want to go on and on, but these are the kinds of things and other things that changed my life to thinking that this -- the administrative claim would help me work through this, so --

THE COURT: Okay.

MR. CARSON: That's in summary of the whole thing, and there's a lot more, but it's not the time, so.

THE COURT: Okay. Well, the consideration that I have to take into account here, however, is that the allowance of your claim against the debtors is governed by the law of Michigan; that's where this -- where you inhaled the gas.

MR. CARSON: Right.

THE COURT: Or where the factory was where you say you inhaled the gas.

MR. CARSON: Right.

THE COURT: Under Michigan law the legislature is established as part of the Workers' Disability Compensation Act that an employee's exclusive remedy -- only remedy against an employer for personal injury or occupational disease is the recovery of the benefits provided for in that Workers' Compensation Act.

MR. CARSON: Right. Right.

THE COURT: This is ultimately a negligence claim --

again, that the company was negligent in leaving the canisters in the condition they were in where they were -- where you say you found them. And therefore the exception to that exclusive remedy doesn't apply. The only exception is an intentional tort and the Supreme Court of Michigan has been very clear on that in construing the Workers' Compensation statute.

MR. CARSON: Right.

THE COURT: In a case called Gray v. Morley --

MR. CARSON: Right.

THE COURT: -- 460 Mich. 738 (1999).

So I believe that the debtors are correct that your only remedy here is to continue to pursue your Workers' Compensation claim under the Workers' Disability Compensation Act. And my disallowance of your administrative claim here is without prejudice to your rights in that Workers' Compensation proceeding, including if ultimately you're -- you know, you're found to be entitled to payment by either the debtor or, as would probably happen, the state of Michigan.

And the exclusive exception is in Section 418.1311 of that Workers' Compensation Act, so I'm going to grant the debtors' objection. Again, as they say and as we made clear on the record, it's without prejudice to your continued right to get -- if in fact you win in the Workers' Compensation case that's pending -- to get paid on that claim, either from Michigan --

MR. CARSON: Right.

THE COURT: -- or from the debtor under the Michigan act.

So I'm going to ask the debtor to submit an order consistent with that ruling.

MR. LYONS: We will do so, Your Honor. And we'll copy Mr. Carson.

THE COURT: Okay. Thank you.

MR. LYONS: All right, Your Honor, that's it for the claims agenda. I thought I would quickly sum up where we are just generally speaking with claims that are out there, and this won't take more than a minute or so.

THE COURT: Okay.

MR. LYONS: We have about eighty or so claims, both pre-petition and post-petition. There are, you know, several significant claims, including the Ohio Workers' Compensation claim, which we're in active discussions with them, but that is a, you know --

THE COURT: I'm sorry, I jostled the microphone. Ohio, you say?

MR. LYONS: Yeah.

THE COURT: Yeah.

MR. LYONS: The Ohio Bureau of Workers' Compensation.

THE COURT: Right.

MR. LYONS: We're working with them --

THE COURT: Right.

MR. LYONS: -- but that's a pretty significant claim.

THE COURT: Right.

MR. LYONS: We have a number of federal claims that we're negotiating with the U.S. government on, and there are also a host of environmental claims. Some of the environmental claims go away though, once DPH is able to sell off certain sites, so those are being wound down and disposed of.

THE COURT: Okay.

MR. LYONS: Then, you know, assorted trade claims, but we're making really good progress on those. Then up on appeal we have the Ace Michigan sovereign immunity issue; that's before the Second Circuit --

THE COURT: Right.

MR. LYONS: -- I believe oral argument's going to be August 28th.

Also up on appeal is the Michigan post-petition assessment claim; that's fully briefed awaiting ruling from the district court. Then of course, two days ago there were a bunch of avoidance actions, so those still are wending their way through the process.

THE COURT: Right.

MR. LYONS: So that's pretty much where we are, you know, and Methode as well is out there. You know, ultimately we're looking forward to case closing when the rest of these

matters get resolved.

THE COURT: I am too.

MR. LYONS: So -- but we're making progress and I think we're keeping our --

THE COURT: No, I think you're --

MR. LYONS: -- eye on the ball.

THE COURT: I mean, I said this yesterday -- or the day before yesterday. You clearly are making progress, given where you started with over 13,000 claim objections.

Okay.

MR. LYONS: So that's it. Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon these proceedings were concluded at 10:54 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Avigayil Roth, certify that the foregoing transcript is a true and accurate record of the proceedings.

Avigayil Roth

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